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## SCHEDULES

### SCHEDULE 20 **U.K.**

Section 70

#### PENSION SCHEMES ETC: MISCELLANEOUS

##### *Introduction*

1 Part 4 of FA 2004 (pension schemes etc) is amended as follows.

##### *Persons by whom registered pension schemes may be established*

2 (1) Section 154 (persons by whom registered pension scheme may be established) is amended as follows.

(2) For subsection (1) substitute—

“(1) An application to register a pension scheme may be made only if the pension scheme—

- (a) is an occupational pension scheme, or
- (b) has been established by a person with permission under FISMA 2000 to establish in the United Kingdom a personal pension scheme or a stakeholder pension scheme.”

(3) After subsection (2) insert—

“(2A) Subsection (1) is to be construed in accordance with section 22 of FISMA 2000, any relevant order under that section and Schedule 2 to that Act.”

(4) Omit subsection (3).

(5) In subsection (4), omit “and section 155”.

3 Omit section 155 (persons by whom scheme may be established: supplementary).

4 In section 273 (members liable as scheme administrator)—

- (a) in subsection (5)(a), omit “was established by a person or body specified in section 154(1)(a) to (g) (insurance companies etc) and”, and
- (b) in subsection (7), omit “was established by a person or body specified in section 154(1)(a) to (g) and”.

##### *Unauthorised payments reduced by amount of scheme sanction charge*

5 In section 160 (unauthorised payments), after subsection (4) insert—

“(4A) If an unauthorised member payment or unauthorised employer payment made to or in respect of a person would have been greater but for a reduction made in respect of the whole, or any proportion, of the amount which the scheme administrator considers may be the amount of the liability to the

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scheme sanction charge in respect of it, it is to be regarded for the purposes of this Part as increased by the amount of the reduction.

(4B) But if the amount, or that proportion of the amount, of that liability is in fact less than the amount of the reduction, a subsequent payment of an amount not exceeding the difference between that amount and the amount of the reduction made—

- (a) to or in respect of the same person, and
- (b) before the end of the period of two years beginning with the date on which the unauthorised member payment or unauthorised employer payment was made,

is not to be regarded for the purposes of this Part as an unauthorised member payment or unauthorised employer payment.”

### *Surrenders*

6 (1) Section 172A (surrender) is amended as follows.

(2) In subsection (5), after paragraph (d) insert—

- “(da) a surrender made as part of a retirement-benefit activities compliance exercise,
- (db) a surrender of a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) made in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them),”.

(3) In subsection (10), for “An” substitute “For the purposes of this section an”.

(4) After that subsection insert—

“(10A) For the purposes of this section a surrender relating to an arrangement under the pension scheme (“the old arrangement”) is made as part of a retirement-benefit activities compliance exercise if—

- (a) it is made in connection with the making of an arrangement under another pension scheme relating to the member (“the new arrangement”),
- (b) the old arrangement and the new arrangement relate to the same employment,
- (c) both the rights surrendered and the rights conferred under the new arrangement consist of or include a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both),
- (d) the surrender and the making of the new arrangement constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
- (e) the rights surrendered and the rights conferred under the new arrangement are not significantly different.”

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*Scheme pensions where ill-health condition met*

- 7 (1) Schedule 28 (pension rules) is amended as follows.
- (2) In paragraph 2(4) (scheme pensions: cases where cessation or reduction of pension is permitted), for paragraph (a) substitute—
- “(a) the reduction of the pension if the member became entitled to it by reason of the ill-health condition being met,”.
- (3) In paragraph 2A(2) (certain reductions not permitted if part of avoidance arrangements), for “the rate of which is reduced in accordance with paragraph (b) of sub-paragraph (4) of paragraph 2 but” substitute “ which is reduced in accordance with paragraph (a) of sub-paragraph (4) of paragraph 2, or the rate of which is reduced in accordance with paragraph (b) of that sub-paragraph, and ”.

*Unsecured and dependants' unsecured pensions: reference periods*

- 8 (1) Schedule 28 (pension rules) is amended as follows.
- (2) In paragraph 10 (reference periods for unsecured pensions), for sub-paragraph (1) substitute—
- “(1) Subject as follows, the period of five unsecured pension years beginning with the first unsecured pension year, and each succeeding period of five unsecured pension years, is a “reference period”.
- (1A) Sub-paragraph (1B) applies if, at any time during a reference period (“the current reference period”), the member notifies the scheme administrator that the member wishes a new reference period to begin on the next day that is an anniversary of the reference date in relation to the current reference period.
- (1B) The scheme administrator may determine—
- (a) that the current reference period is to end immediately before that day (so that sub-paragraph (1) no longer applies), and
- (b) that (subject to any further operation of this sub-paragraph) the period of five unsecured pension years beginning with that day, and each succeeding period of five unsecured pension years, is to be a reference period.
- (1C) The first day of each reference period is, in relation to that period, “the reference date”.”
- (3) In paragraph 24 (reference periods for dependants' unsecured pensions), for sub-paragraph (1) substitute—
- “(1) Subject as follows, the period of five unsecured pension years beginning with the first unsecured pension year, and each succeeding period of five unsecured pension years, is a “reference period”.
- (1A) Sub-paragraph (1B) applies if, at any time during a reference period (“the current reference period”), the dependant notifies the scheme administrator that the dependant wishes a new reference period to begin on the next day that is an anniversary of the reference date in relation to the current reference period.

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(1B) The scheme administrator may determine—

- (a) that the current reference period is to end immediately before that day (so that sub-paragraph (1) no longer applies), and
- (b) that (subject to any further operation of this sub-paragraph) the period of five unsecured pension years beginning with that day, and each succeeding period of five unsecured pension years, is to be a reference period.

(1C) The first day of each reference period is, in relation to that period, “the reference date”.

*Pension commencement lump sums*

- 9 In section 166(2)(a) (when person becomes entitled to pension commencement lump sum), after “paid” insert “ (or, if the person dies before becoming entitled to the pension in connection with which it was anticipated it would be paid, immediately before death) ”.
- 10 In section 219(7) (multiple benefit crystallisation events occurring by reason of payment of lump sum death benefits treated as occurring immediately before death), insert at the end “ but immediately after any benefit crystallisation event occurring immediately before the individual's death by virtue of section 166(2). ”
- 11 (1) Schedule 29 (authorised lump sums) is amended as follows.
- (2) In paragraph 1(1) (conditions to be met if lump sum is to be pension commencement lump sum)—
- (a) for paragraph (a) substitute—
    - “(a) the member becomes entitled to it before reaching the age of 75,
    - (aa) the member becomes entitled to it in connection with becoming entitled to a relevant pension (or dies after becoming entitled to it but before becoming entitled to the relevant pension in connection with which it was anticipated that the member would become entitled to it)”
  - (b) in paragraph (c), for “of three months beginning with” substitute “beginning six months before, and ending one year after, ”, and
  - (c) omit paragraph (e)(but not including the “and” at the end).
- (3) In paragraph 1(6) (power to provide that certain lump sums are to be treated as pension commencement lump sums), for “(1)(c) and (e)” substitute “(1)(a) and (c) ”.
- (4) In paragraph 2 (“permitted maximum”), after sub-paragraph (5) insert—
- “(5A) But if the member dies before becoming entitled to the relevant pension in connection with which it was anticipated that the member would become entitled to the lump sum, the permitted maximum is the available portion of the member's lump sum allowance.”

*Winding-up lump sums*

- 12 (1) Paragraph 10 of Schedule 29 (winding-up lump sums) is amended as follows.

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- (2) In sub-paragraph (1)(c), for “the member's employer” substitute “ any person by whom the member is employed at the time when the lump sum is paid, and who has made contributions under the pension scheme in respect of the member within the period of five years ending with the day on which it is paid, ”.
- (3) In sub-paragraph (3)—
  - (a) for “are that the employer” substitute “ referred to in paragraph (c) of sub-paragraph (1) are that the person mentioned in that paragraph ”, and
  - (b) omit paragraph (a).

*Lump sum death benefits*

- 13 (1) Schedule 29 (authorised lump sums) is amended as follows.
  - (2) In paragraph 13(c) (defined benefits lump sum death benefit), for “day on which the member died,” substitute “ earlier of the day on which the scheme administrator first knew of the member's death and the day on which the scheme administrator could first reasonably be expected to have known of it, ”.
  - (3) In paragraph 15(1)(c) (uncrystallised funds lump sum death benefit), for “day on which the member died,” substitute “ earlier of the day on which the scheme administrator first knew of the member's death and the day on which the scheme administrator could first reasonably be expected to have known of it, ”.

*Taxable property held by investment-regulated pension schemes: indirect holdings in REITs*

- 14 (1) Schedule 29A (taxable property held by investment-regulated pension schemes) is amended as follows.
  - (2) In paragraph 20(1)(b) (indirect holdings: introduction to exception for REITs), for “paragraph 22 makes” substitute “ paragraphs 22, 24 and 25 make ”.
  - (3) In paragraph 22 (REITs)—
    - (a) in sub-paragraph (1), after paragraph (b) insert— “ and paragraph 24 applies to the pension scheme's interest in the vehicle. ”, and
    - (b) omit sub-paragraph (2).
  - (4) In paragraph 24(1) (conditions applying for paragraph 23), for “paragraph 23” substitute “ paragraphs 22 and 23 ”.
  - (5) In paragraph 25(2) (provisions supplementing paragraph 24), for “23(1)” substitute “ 22 or 23 ”.

*Transitional provision: primary protection*

- 15 In paragraph 11D of Schedule 36 (lump sum death benefits to be taken into account as part of individual's pre-commencement rights only if paid under policy not significantly varied since 5th April 2006), after sub-paragraph (2) insert—
  - “(2A) A variation of the terms of a policy of life insurance made in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them) is to be ignored for the purposes of sub-paragraph (2).

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- (2B) Where a policy of life insurance held on 5th April 2006 for the purposes of an occupational pension scheme is surrendered and a new one is taken out—
- (a) as part of a retirement-benefit activities compliance exercise, or
  - (b) to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them),
- the new policy is to be treated for the purposes of sub-paragraph (2) as if it were the same as the old.
- (2C) For this purpose a policy of life insurance is surrendered and a new one is taken out as part of a retirement-benefit activities compliance exercise if—
- (a) the surrender of the old policy and taking out of the new policy constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
  - (b) the rights under the old policy and the new policy are not significantly different.”

*Transitional provision: enhanced protection*

- 16 Schedule 36 (transitional provision) is amended as follows.
- 17 (1) Paragraph 12 (when enhanced protection ceases) is amended as follows.
- (2) In paragraph (c) of sub-paragraph (2), for “solely for the purposes of a permitted transfer” substitute “ in permitted circumstances ”.
- (3) After that sub-paragraph insert—
- “(2A) An arrangement is made in permitted circumstances if it is made—
- (a) for the purposes of a permitted transfer,
  - (b) as part of a retirement-benefit activities compliance exercise, or
  - (c) as part of an age-equality compliance exercise.
- (2B) For the purposes of sub-paragraph (2A)(b) an arrangement (“the new arrangement”) relating to an individual is made as part of a retirement-benefit activities compliance exercise if—
- (a) it is made in connection with the cancellation of rights under another arrangement relating to the individual (“the old arrangement”),
  - (b) the old arrangement and the new arrangement relate to the same employment,
  - (c) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement,
  - (d) the making of the new arrangement and the cancellation of the old arrangement constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the arrangement is made are limited to retirement-benefit

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activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and

- (e) the rights cancelled under the old arrangement and the rights conferred under the new arrangement are not significantly different.

(2C) For the purposes of sub-paragraph (2A)(c) an arrangement (“the new arrangement”) is made as part of an age-equality compliance exercise if—

- (a) it is made in connection with the cancellation of rights under another arrangement relating to the individual (“the old arrangement”),
- (b) the old arrangement and the new arrangement relate to the same employment,
- (c) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement, and
- (d) the new arrangement is made, and the old arrangement cancelled, in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them).”

(4) In sub-paragraph (7)—

- (a) omit paragraph (a),
- (b) in paragraph (b), omit “held for the purposes of, or representing accrued rights under, the arrangement”, and
- (c) in paragraph (c), for “those” (in both places) substitute “ the ”.

(5) In paragraph (a) of sub-paragraph (8), omit—

- (a) “, or two or more money purchase arrangements that are not cash balance arrangements,”, and
- (b) “or” at the end.

(6) After paragraph (b) of that sub-paragraph insert—

- “(c) where the arrangement is a cash balance arrangement or a defined benefits arrangement relating to a present or former employment, they are transferred in connection with a relevant business transfer so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement made under a registered pension scheme or recognised overseas pension scheme, or
- (d) where the arrangement (“the old arrangement”) is a cash balance arrangement or a defined benefits arrangement, they are transferred as part of a retirement-benefit activities compliance exercise so as to become held for the purposes of, or to represent rights under, a cash balance arrangement or defined benefits arrangement (“the new arrangement”) relating to the same employment as the old arrangement and made under a registered pension scheme or recognised overseas pension scheme.”

(7) After that sub-paragraph insert—

- “(8A) For the purposes of sub-paragraph (8)(c) “relevant business transfer” means a transfer of an undertaking or a business (or part of an undertaking or a business) from one person to another—

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- (a) which involves the transfer of at least 20 employees, and
  - (b) in the case of which, if the transferor and the transferee are bodies corporate, they would not be treated as members of the same group for the purposes of Chapter 4 of Part 10 of ICTA.
- (8B) For the purposes of sub-paragraph (8)(d) sums or assets held for the purposes of, or representing accrued rights under, the old arrangement are transferred as part of a retirement-benefit activities compliance exercise if—
- (a) there is a prospective entitlement to pension death benefits within section 167(1) or lump sum death benefits within section 168(1) (or both) under both the old arrangement and the new arrangement, and
  - (b) the transfer constitutes or forms part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the old arrangement was made are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005.”
- (8) In sub-paragraph (9)—
- (a) in paragraph (a), omit “, or each of the arrangements,” and “and” at the end,
  - (b) in paragraph (b), after “(8)(b)” insert “ or (d) ” and after “15” insert “ to 17 ”, and
  - (c) after that paragraph insert “and
    - (c) if the transfer is a permitted transfer by virtue of sub-paragraph (8)(c), this paragraph (and paragraphs 13, 15 to 17 and 17A(3)) apply as if the arrangement to which the transfer is made were the same as that from which it is made and (if the employment is transferred) as if the employment with the transferee were the employment with the transferor.”
- (9) After that sub-paragraph insert—
- “(10) The Treasury may by order amend sub-paragraph (8) (and make other amendments consequential on any amendment of that sub-paragraph).”
- 18 In paragraph 14 (relevant contributions), after sub-paragraph (3) insert—
- “(3A) A variation of the terms of a policy made in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them) is to be ignored for the purposes of sub-paragraph (3).
- (3B) Where a policy of insurance on the life of the individual issued, or issued in respect of insurances made, before 6th April 2006 is surrendered and a new one is taken out—
- (a) as part of a retirement-benefit activities compliance exercise, or
  - (b) as part of an age-equality compliance exercise.
- the new policy is to be treated for the purposes of sub-paragraph (3) as if it were the same as the old.
- (3C) For the purposes of sub-paragraph (3B)(a) a policy is surrendered, and a new policy of life insurance is taken out, as part of a retirement-benefit activities compliance exercise if—

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- (a) the surrender of the old policy and the taking out of the new policy constitute or form part of a transaction the purpose of which is to secure that the activities of the pension scheme under which the arrangement is made are limited to retirement-benefit activities within the meaning of section 255 of the Pensions Act 2004 or Article 232 of the Pensions (Northern Ireland) Order 2005, and
  - (b) the rights under the old policy and the new policy are not significantly different.
- (3D) For the purposes of sub-paragraph (3B)(b) a policy is surrendered, and a new policy of life insurance is taken out, as part of an age-equality compliance exercise if—
- (a) the old policy is surrendered, and the new policy is taken out, in order to comply with the Employment Equality (Age) Regulations 2006 or Employment Equality (Age) Regulations (Northern Ireland) 2006 (or any regulations amending or replacing them), and
  - (b) any significant difference between the rights under the old policy and the rights under the new policy is attributable to the need to comply with those Regulations (or any regulations amending or replacing them).”
- 19 (1) Paragraph 15 (relevant benefit accrual) is amended as follows.
- (2) In sub-paragraph (2), after “arrangement” (in both places) insert “ which are transferred ”.
- (3) In sub-paragraph (7), for “15 and 16” substitute “ 16 and 17 ”.

*Inheritance tax: lump sum death benefits*

- 20 In section 58 of IHTA 1984 (settlements: “relevant property”), after subsection (2) insert—
- “(2A) For the purposes of subsection (1)(d) above—
- (a) property applied to pay lump sum death benefits within section 168(1) of the Finance Act 2004 in respect of a member of a registered pension scheme is to be taken to be held for the purposes of the scheme from the time of the member's death until the payment is made, and
  - (b) property applied to pay lump sum death benefits in respect of a member of a section 615(3) scheme is to be taken to be so held if the benefits are paid within the period of two years beginning with the earlier of the day on which the member's death was first known to the trustees or other persons having the control of the fund and the day on which they could first reasonably be expected to have known of it.”

*Benefits under employer-financed retirement benefits schemes*

- 21 In section 393B of ITEPA 2003 (employer-financed retirement benefits schemes: relevant benefits), after subsection (4) insert—
- “(4A) Regulations under subsection (3)(d) may include provision having effect in relation to times before they are made.”



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